

**§ 33B-10. Determination of incapacity; effect.**

(a) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if (i) the custodial trust was created under G.S. 33B-5, (ii) the transferor has so directed in the instrument creating the custodial trust, (iii) a determination that a beneficiary is an incompetent adult has been made under the provisions of Chapter 35A, including a determination of limited incompetence under the provisions of G.S. 35A-1112(d), unless the court provided otherwise, or (iv) the custodial trustee has determined that the beneficiary is incapacitated under subsection (b) of this section.

(b) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon (i) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney, (ii) the certificate of the beneficiary's physician, (iii) authority given to the custodial trustee in the instrument creating the trust to determine the incapacity of the beneficiary after the creation of the custodial trust, or (iv) other reasonable evidence.

(c) If a custodial trustee for an incapacitated beneficiary determines that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(d) Regardless of whether any determination of incapacity under subsection (b) of this section has or has not been made, the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, may petition under the procedures of Chapter 35A for a determination by the court whether the beneficiary is or continues to be incapacitated as defined in G.S. 33B-1(8). A determination of incapacity does not require appointment of a guardian of the estate unless in the discretion of the court such appointment is otherwise warranted.

(e) Incapacity of a beneficiary does not terminate (i) the custodial trust, (ii) any designation of a successor custodial trustee, (iii) rights or powers of the custodial trustee, or (iv) any immunities of third persons acting on instructions of the custodial trustee.

(f) A custodial trustee shall not be liable for any determinations authorized by this section regarding the capacity or incapacity of the beneficiary made in good faith. (1995, c. 486, s. 1.)